

**ORIGINAL**

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Attorneys for Plaintiff

U.S. DISTRICT COURT  
 2005 AUG 26 P 5:02  
 BY: P. TAYLOR

**IN THE UNITED STATES DISTRICT COURT  
 FOR THE DISTRICT OF UTAH**

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<b>FORD MOTOR COMPANY</b> , a Delaware corporation,	Civil No. _____ H
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Plaintiff,

v.

**FABTECH MANUFACTURING, INC.,**  
**d/b/a FIRE AND ICE MOTORSPORT**, a  
 Utah Corporation,

Judge Dee Benson  
 DECK TYPE: Civil  
 DATE STAMP: 08/26/2005 @ 17:00:21  
 CASE NUMBER: 2:05cv00719 DB

Defendant.

---

**COMPLAINT**

Plaintiff Ford Motor Company ("Ford" or "Plaintiff"), for its claim against defendant Fabtech Manufacturing, Inc. d/b/a Fire and Ice Motorsports ("Defendant"), alleges as follows:

**NATURE AND SUBSTANCE OF THE ACTION**

1. Ford files this action against Defendant for trademark dilution, trademark infringement, and false designation under the Lanham Act (15 U.S.C. §1051 et seq.) Defendant manufactures and sells counterfeit aftermarket accessories which infringe upon Ford's federally

protected rights. Defendant sells its products on its own website and third-party Internet auction sites, including eBay.com. Defendant's products infringe upon Ford's world famous and distinctive trademarks, including but not limited to the FORD BLUE OVAL®, FORD STYLIZED®, and MUSTANG® (collectively the "Ford Trademarks"). Printouts of two auctions recently conducted by Defendant on eBay.com are attached hereto as Exhibit A, and show Defendant's examples of Defendant's counterfeit products. Defendant's unauthorized use of the Ford Trademarks dilutes the Ford Trademarks and causes consumer confusion as to origin of the goods. Ford seeks a preliminary and permanent injunction enjoining Defendant's unauthorized use of the Ford Trademarks and colorable imitations thereof, damages under the Lanham Act, equitable and monetary relief pursuant to defendant's breach of its contractual obligations to Ford, including Ford's attorneys' fees and costs incurred in bringing this action.

**JURISDICTION AND VENUE**

2. This Court has subject matter jurisdiction over this action pursuant to:
  - (a) Judicial Code, 28 U.S.C. § 1331, relating to "federal question" jurisdiction;
  - (b) Section 39 of the Lanham Act, 15 U.S.C. § 1121, giving this Court jurisdiction over all actions arising under the Lanham Act without regard to the amount in controversy;
  - (c) Section 32(1) of the Lanham Act, 15 U.S.C. § 1114(1), relating to the counterfeit, reproduction, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of goods;
  - (d) Section 43(a) of the Lanham Act, 15 U.S.C. Section 1125(a), relating to the use of false designations of origin and/or sponsorship tending falsely to describe or designate

the source, and/or sponsorship of goods affecting commerce, and relating to false advertising and trade dress infringement and dilution;

(e) Section 43(c) of the Lanham Act, 15 U.S.C., Section 1125(c), relating to dilution;

(f) The Judicial Code, 28 U.S.C. § 1338(a), conferring on this Court jurisdiction over actions arising under federal trademark laws;

(g) The Judicial Code, 28 U.S.C. § 1338(b), relating to claims of unfair competition "joined with a substantial and related claim under the ... trademark laws"; and

(h) The Judicial Code, 28 U.S.C. § 1367 providing for supplemental jurisdiction over the state law claims in this action.

3. This action arises out of wrongful acts committed by Defendant in this judicial district, and Defendant's principle place of business is found in this district.

4. Venue is proper under 28 U.S.C. §1391 because a substantial part of the events giving rise to these claims occurred in this judicial district.

### **THE PARTIES**

5. Ford is a Delaware corporation with its principal place of business in Dearborn, Michigan.

6. Defendant Fabtech Manufacturing, Inc. d/b/a Fire and Ice Motorsports is a Utah company with its principal place of business in Sandy, Utah.

### **FACTS COMMON TO ALL CLAIMS**

*The Ford Trademarks*

7. Ford first obtained a trademark registration for the trademark FORD® in 1909, and has since obtained numerous United States Trademark Registrations for the trademark

FORD®. Ford first began using the trademark MUSTANG® in commerce in 1964, and first obtained a trademark registration for the trademark MUSTANG® in 1987.

8. Ford owns numerous registrations for the Ford Trademarks which are valid, unrevoked, subsisting, and incontestable, and constitute prima facie evidence of Ford's exclusive ownership of the Ford Trademarks marks.

9. Ford has continuously used the Ford Trademarks in connection with the promotion, advertising, and sale of automobiles and other products and services since well before the acts of Defendant complained of herein.

10. Ford has spent millions of dollars and has expended significant effort in advertising, promoting, and developing the Ford Trademarks marks throughout the world. As a result of such advertising and expenditures, Ford has established considerable goodwill in the Ford Trademarks. The Ford Trademarks have become widely known and recognized throughout the world as a symbol of high quality automotive goods and services. The Ford Trademarks are world-famous and distinctive, and has become associated by the consuming public exclusively with Ford. The Ford Trademarks, and the goodwill associated with the Ford Trademarks, is an invaluable asset of substantial and inestimable worth to Ford.

*Defendant's Violations of the Ford Trademarks*

11. Defendant's use of the Ford Trademarks and colorable imitations thereof constitutes a misappropriation of the Ford Trademarks and associated good will, and is likely to cause potential purchasers of Defendant's products and services, as well as the public at large, to believe that Defendant's services and products are affiliated with, authorized, sponsored by, or endorsed by Ford. In addition, Defendant's wrongful use of the Ford Trademarks mark dilutes, tarnishes, and whittles away the distinctiveness of the Ford Trademarks. Defendant's conduct is

intentionally fraudulent, malicious, willful, and wanton. Accordingly, this is an exceptional case within the meaning of 15 U.S.C. § 1117(a).

12. In a letter dated February 8, 2005 Ford demanded that Defendant cease and desist from its violations of the Ford Trademarks. On February 21, 2005 Defendant executed a contract memorializing Defendant's agreement to cease and desist from its unauthorized use of the Ford Trademarks, and to pay damages to Ford based upon its sale of counterfeit goods. A copy of the letter and the agreement executed by Defendant is agreement attached hereto as Exhibit B (hereafter the "Agreement"). Defendant requested, and Ford permitted, the Defendant to make payments according to a payment plan. A copy of the promissory note executed by Defendant is attached hereto as Exhibit C.

13. Defendant has breached its obligations under the Agreement, and continues to infringe upon the Ford Trademarks in direct violation of the Agreement. Defendant has breached its obligations under the Agreement even before satisfying its obligation under the Agreement to pay damages to Ford according to the payment plan requested by Defendant.

14. The Agreement provides that in case of breach by the Defendant that "Ford will be entitled to both a preliminary and permanent injunction," and that Defendant "will pay all costs incurred by Ford in enforcing [the] Agreement, including reasonable attorneys' fees."

**FIRST CLAIM FOR RELIEF**  
(Trademark Dilution)

15. The allegations set forth above are incorporated herein by this reference.

16. The Ford Trademarks are famous. The Ford Trademarks are inherently distinctive and have acquired distinctiveness.

17. Ford has extensively and exclusively used the Ford Trademarks in commerce throughout the world in connection with automobiles and other products and services.

18. Defendant's use of the Ford Trademarks, and counterfeits thereof, has caused and continues to cause irreparable injury to and dilution of the Ford Trademarks' distinctive quality in violation of Ford's rights under 15 U.S.C. § 1125(c). Defendant's wrongful use of the Ford Trademarks dilutes, blurs, tarnishes, and whittles away the distinctiveness of the Ford Trademarks.

19. Defendant has used and continues to use the Ford Trademarks or counterfeits thereof willfully and with the intent to dilute the Ford Trademarks, and with the intent to trade on the reputation and good will of Ford and of the Ford Trademarks.

20. As a direct and proximate result of Defendant's conduct, Ford has suffered irreparable harm to the valuable Ford Trademarks.

21. Unless Defendant is enjoined, the Ford Trademarks will continue to be irreparably harmed and diluted. Ford has no adequate remedy at law that will compensate for the continued and irreparable harm it will suffer if Defendant's actions are allowed to continue.

22. Defendant has used and continues to use the Ford Trademarks, or counterfeits thereof, willfully and with the intent to dilute the Ford Trademarks, and with the intent to trade on the reputation and goodwill of Ford and of the Ford Trademarks. Accordingly, this is an exceptional case within the meaning of 15 U.S.C. § 1117(a).

23. As a direct and proximate result of Defendant's conduct, Ford is entitled to damages, the equitable remedy of an accounting, and a disgorgement of, all revenues and/or profits wrongfully derived by Defendant from its infringing and diluting use of the Ford Trademarks pursuant to 15 U.S.C. § 1117.

**SECOND CLAIM FOR RELIEF**

(Trademark Infringement)

24. The allegations set forth above are incorporated herein by this reference.
25. The Ford Trademarks are inherently distinctive and have acquired secondary meaning. The public associates the Ford Trademarks exclusively with Ford and Ford's products and services. This is a result of the inherent distinctiveness of the Ford Trademarks and of distinctiveness acquired through extensive advertising, sales, and use in commerce throughout the world in connection with Ford's products and services bearing or using the Ford Trademarks.
26. Defendant's actions constitute willful infringement of Ford's exclusive rights in the Ford Trademarks in violation of 15 U.S.C. § 1114.
27. Defendant's use of the Ford Trademarks, counterfeits, copies, reproductions, or colorable imitations thereof has been, and continues to be done, with the intent to cause confusion, mistake, and to deceive consumers concerning the source and/or sponsorship of Ford's products and services. Defendant has used counterfeits of the Ford Trademarks in connection with their products and services with the knowledge that the marks are counterfeits and with the intent to use counterfeits. Accordingly, this is an exceptional case within the meaning of 15 U.S.C. § 1117(a).
28. As a direct and proximate result of Defendant's conduct, Ford has suffered irreparable harm to the valuable Ford Trademarks. Unless Defendant is restrained from further infringement of the Ford Trademarks, Ford will continue to be irreparably harmed.
29. Ford has no adequate remedy at law that will compensate for the continued and irreparable harm it will suffer if Defendant's acts are allowed to continue.

30. As a direct and proximate result of Defendant's conduct, Ford is entitled to damages, treble damages, the equitable remedy of an accounting for, and a disgorgement of, all revenues and/or profits wrongfully derived by Defendant from its infringement and dilution of the Ford Trademarks pursuant to 15 U.S.C. § 1117.

**THIRD CLAIM FOR RELIEF**  
(False Designation of Origin)

31. The allegations set forth above are incorporated herein by this reference.

32. Defendant has knowingly used the Ford Trademarks and trade dress, or counterfeits, reproductions, copies, or colorable imitations thereof, in connection with the products and services that Defendant advertises, promotes, and sells. Defendant has used counterfeits of the Ford Trademarks knowing that the marks used are counterfeits and with the intent to use counterfeits of the Ford Trademarks. Defendant's actions render this case exceptional within the meaning of 15 U.S.C. § 1117(a).

33. Defendant's use of the Ford Trademarks alleged above is likely to confuse, mislead or deceive customers, purchasers, and members of the general public as to the origin, source, sponsorship, or affiliation of Defendant's services and products, and is likely to cause such people to believe in error that Defendant's products and services have been authorized, sponsored, approved, endorsed, or licensed by Ford or that Defendant is in some way affiliated with Ford.

34. Defendant's acts constitute false or misleading descriptions, false advertising, and false designations of the origin and/or sponsorship of Defendant's products and services, and constitute trade dress infringement in violation of Section 43(a) of the Lanham Act, as amended, 15 U.S.C. § 1125(a).

35. By reason of Defendant's actions, Ford has suffered irreparable harm to the valuable Ford Trademarks. Unless Defendant is restrained, Ford will continue to be irreparably harmed.

36. Ford has no remedy at law that will compensate for the continued and irreparable harm that will be caused if Defendant's acts are allowed to continue.

37. As a direct and proximate result of Defendant's conduct, Ford is entitled to damages, treble damages, the equitable remedy of an accounting for, and a disgorgement of, all revenues and/or profits wrongfully derived by Defendant from its infringement and dilution of the Ford Trademarks pursuant to 15 U.S.C. § 1117.

**FOURTH CLAIM FOR RELIEF**  
(Breach of Contract)

38. The allegations set forth above are incorporated herein by this reference.

39. On February 21, 2005, Defendant executed a legally binding settlement agreement which explicitly forbids the conduct at issue in this action.

40. As a direct and proximate result of Defendant's breach of the Agreement, Ford is entitled to a preliminary and permanent injunction, and recovery of all of its costs and attorneys' fees incurred in this action.

WHEREFORE, Ford prays for judgment against Defendant as follows:

1. Under all claims for relief, that a permanent injunction be issued enjoining Defendant, its employees, agents, successors and assigns, and all those in active concert and participation with Defendant, and each of them who receives notice directly or otherwise of such injunctions, from:

(a) imitating, copying, or making unauthorized use of the Ford Trademarks;

- (b) importing, manufacturing, producing, distributing, circulating, selling, offering for sale, advertising, promoting or displaying any service or product using any simulation, reproduction, counterfeit, copy, or colorable imitation of any or all of the Ford Trademarks;
- (c) using any simulation, reproduction, counterfeit, copy or colorable imitation of the Ford Trademarks in connection with trade name or corporate name of its business or similar establishment.
- (d) using any simulation, reproduction, counterfeit, copy or colorable imitation of the Ford Trademarks in connection with the promotion, advertisement, display, sale, offering for sale, manufacture, production, circulation or distribution of any service or product;
- (e) using any false designation of origin or false description (including, without limitation, any letters or symbols constituting the Ford Trademarks, or performing any act, which can, or is likely to, lead members of the trade or public to believe that any service or product manufactured, distributed or sold by Defendant are in any manner associated or connected with Ford, or is sold, manufactured, licensed, sponsored, approved or authorized by Ford;
- (f) transferring, consigning, selling, shipping or otherwise moving any goods, packaging or other materials in Defendant's possession, custody or control bearing a design or mark substantially identical to Ford Trademarks;
- (g) engaging in any other activity constituting unfair competition with Ford with respect to the Ford Trademarks, or constituting an infringement of any or all of the Ford Trademarks, or of Ford's rights in, or to use or exploit, any or all of the Ford Trademarks; and
- (h) instructing, assisting, aiding or abetting any other person or business entity in engaging in or performing any of the activities referred to in subparagraphs (a) through (f) above.

2. For an order directing that Defendant deliver for destruction all products, labels, tags, signs, prints, packages, videos, and advertisements in its possession or under its control, bearing or using any or all of the Ford Trademarks or any simulation, reproduction, counterfeit, copy or colorable imitation thereof, and all plates, molds, matrices and other means of making the same, pursuant to 15 U.S.C. § 1118.

3. For an order directing such other relief as the Court may deem appropriate to prevent the trade and public from deriving the erroneous impression that any service or product manufactured, sold or otherwise circulated or promoted by Defendant is authorized by Ford or related in any way to Ford's products or services.

4. For an order directing that Defendant file with the Court and serve upon Ford's counsel within thirty (30) days after entry of such judgment, a report in writing under oath, setting forth in detail the manner and form in which Defendant has complied with the above.

5. For an order permitting Ford, and/or auditors for Ford, to audit and inspect the books and records of Defendant for a period of six months after entry of final relief in this matter to determine the scope of Defendant's past use of the FORD® mark, including all revenues and sales related to Defendant's use of the FORD® mark, as well as Defendant's compliance with orders of this Court.

6. For an award of Ford's costs and disbursements incurred in this action, including Ford's reasonable attorneys' fees.

7. For an award of Ford's damages trebled or, alternatively, an award of Defendant's wrongful profits trebled, whichever is greater, plus Ford's costs and attorneys fees, pursuant to 15 U.S.C. § 1117.

8. For an award of Ford's damages arising out of Defendant's acts.

9. For an order requiring Defendant to file with the Court and provide to Ford an accounting of all sales and profits realized by Defendant through the use of the FORD® mark and any counterfeits thereof.

10. For an award of interest, including pre-judgment interest on the foregoing sums.

11. For such other and further relief as the Court may deem just and proper.

By: 

Gregory D. Phillips  
Scott R. Ryther  
HOWARD, PHILLIPS & ANDERSEN  
560 E. 200 South, Suite 300  
Salt Lake City, Utah 84102  
(801) 366-7471

DATED: August 26<sup>th</sup>, 2005.

# Exhibit A

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## Ford Super Duty 99 01 02 03 04 Chrome Decal 1999-2004

**Bidder or seller of this item?** Sign in for your status

**Bidding has ended for this item**

If you are a winner, Sign In for your status.

List an item like this or buy a similar item below.

Find **MORE great stuff**  
at my eBay 

Visit Fire and Ice Motorsports today!

Sold for:

**US \$14.99**

Auction ended early with Buy It Now.



Ended:

Jul-29-05 10:03:46 PDT

Start time:

Jul-26-05 13:30:02 PDT

History:

1 bid (US \$14.99 starting bid)

Buyer:

jaredcherry ( 8 )

Item location:

On YOUR Car/Truck!!  
United States

 Larger Picture

Ships to:

Worldwide

Shipping costs: US \$6.99 - US Postal Service  
Priority Mail® (within

 **PayPal Buyer Protection**

Free Coverage now up to \$1,000. See eligibility.

### Seller information

[fireandicemotorsports \( 21945 \)](#) 

Item number: 7989582779

Email to a friend

Feedback Score: 21945

**Positive Feedback: 99.2%**

Member since Nov-17-02 in United States

Read feedback comments

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Ask seller a question

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 **Fire and Ice Motorsports**

United States )

↓ Shipping and payment details

### Description

#### Fire and Ice Motorsports

Visit my eBay Store: [Fire and Ice Motorsports](#)

GMC | DODGE | CHEVY | FORD | HUMMER

Search my eBay Store:

Ford Super Duty 99 01 02 03 04 Chrome  
Decal 1999-2004





#### Description

You can totally customize your Truck with this

#### **CHROME FLAME DECAL!**

Up for auction is a polished stainless steel decal for the  
**1999-2004 FORD SUPER DUTY**

This will fit over any **5 1/2"** Ford oval decal. This is not a cheap vinyl decal, these flames are manufactured from high grade polished stainless steel and are precision cut using the latest metal-cutting laser technology to give you the BEST chrome look! You can install the decal using 3M decal adhesive available at your local car parts store, what a great addition to your car or truck! Check our feedback and bid with confidence!

**Shipping cost for U.S., Puerto Rico and Canada is \$6.99 and all other countries is \$10.00.**

**DON'T WANT TO WAIT FOR THE AUCTION TO END?**

Visit our Ebay store  
**FIRE AND ICE MOTORSPORTS**  
for our entire selection of FORD accessories at GREAT prices!



ALL ITEMS ARE DESIGNED IN AUTOCAD AND PRECISION LASER CUT  
USING THE LATEST TECHNOLOGY AND SHIPPED FAST.

All of our products are manufactured with top quality polished stainless steel and are precision cut using the latest metal-cutting laser technology. If you have any questions regarding our products, please email us before bidding.

**CHECK OUT OUR OTHER  
FORD ACCESSORIES  
AND WATCH FOR NEW ITEMS IN THE FUTURE!**

#### Payment and Shipping Info

Payment Options Money Order / Cashier's Check, Credit Card, PayPal

Shipping/Handling Rate \$6.99

Insurance Rate \$1.50

Shipping Options See Item Description

Sales Tax 6.6% for In-State Buyers / 0% for Out-of-State Buyers

#### Terms

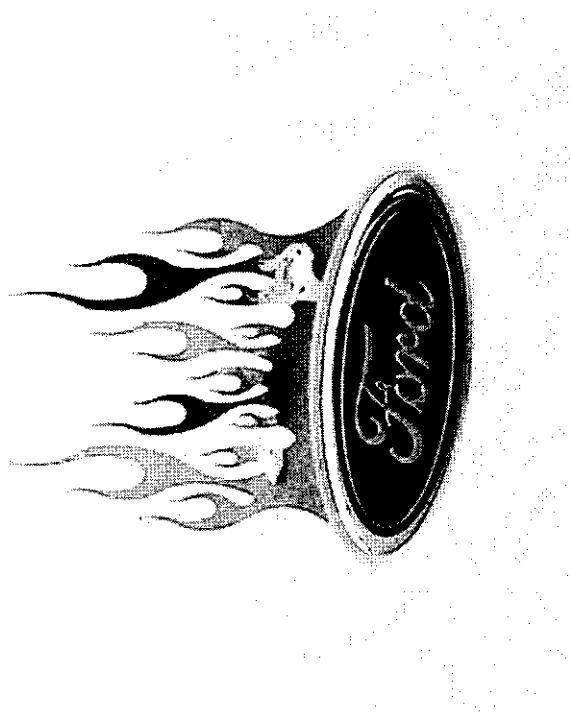
\*\*\*PLEASE NOTE, WE SHIP TO YOUR PAYPAL ADDRESS, SO THE ADDRESS YOU WANT IT SHIPPED TO NEEDS TO MATCH YOUR PAYPAL SHIPPING ADDRESS ON YOUR PAYMENT\*\*\* All of our products are 100% SATISFACTION GUARANTEED if you are not completely satisfied with your purchase you may return it for a full refund (within 14 days of receipt). We will gladly COMBINE

**SHIPPING** if you order more than one item, please email us for details! Paypal and money orders are accepted, however we do NOT accept personal checks. All items will be securely packaged and shipped USPS Priority Mail. Please do not bid if you don't intend to pay because we will file a NPB warning.

**Pay me securely with any major credit card through PayPal!**



0 0 0 1 7



#### **Shipping and payment details**

<b>Shipping Cost</b>	<b>Services Available</b>	<b>Available to</b>
US \$6.99	US Postal Service Priority Mail®	United States Only

Will ship to Worldwide.

<b>Shipping insurance</b>
US \$1.50 Optional

#### **Sales tax**

Seller charges sales tax for items shipped to: UT\* (6.600%).  
\* Tax applies to subtotal + S&H for these states only

#### **Seller's payment instructions & return policy**

SKU O140 If paying by money order please INCLUDE YOUR 10 DIGIT EBAY ITEM NUMBER & EBAY USER NAME (or your shipment will be seriously delayed!). Send your money order (no personal checks please) to: Fire & Ice Motorsports 8415 South 700 West, #21 Sandy, UT 84070 If you would like to pay with your Visa or Mastercard please call us at 801-561-0070.

## Payment methods accepted

 This seller, fireandicemotorsports, prefers PayPal.



- Money order/Cashiers check
- Other - See Payment Instructions for payment methods accepted
- Visa/MasterCard

## Where to go next?

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Seller assumes all responsibility for listing this item.

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# Mustang 99 00 01 02 03 04 CHROME Bumper Letters METAL

Buyer or seller of this item? Sign in for your status

[Buy It Now](#) price: US \$39.99

[Buy It Now >](#)

**SELLER INFORMATION**

fireandicemotorsports (21945) Power Seller

Feedback Score: 21945

**Positive Feedback: 99.2%**

Member since Nov-17-02 in United States

Read feedback comments

Add to Favorite Sellers

Ask seller a question

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Fire and Ice Motorsports

**PayPal Buyer Protection**

Free Coverage now up to \$1,000. See eligibility.

**Description**

**Fire and Ice Motorsports**

[Visit my eBay Store!](#) Fire and Ice Motorsports

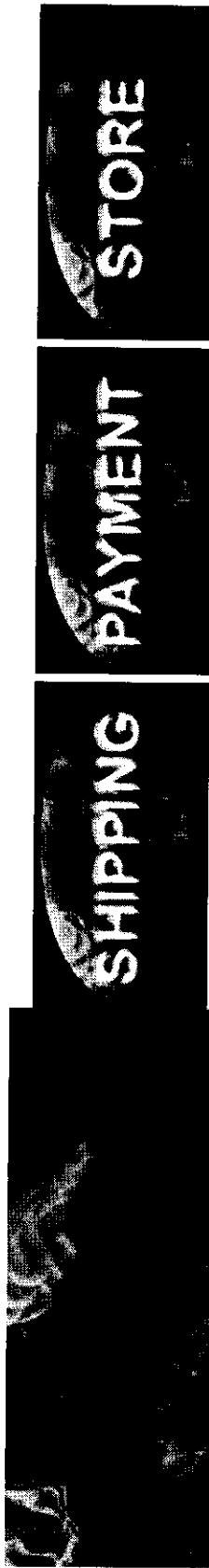
GMC | DODGE | CHEVY | FORD | HUMMER

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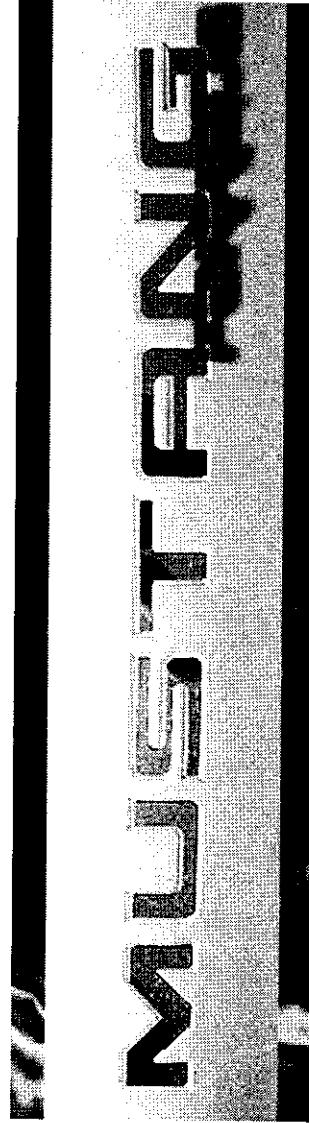
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**item description**

**FORD MUSTANG 1999-2004  
CHROME BUMPER LETTERING**



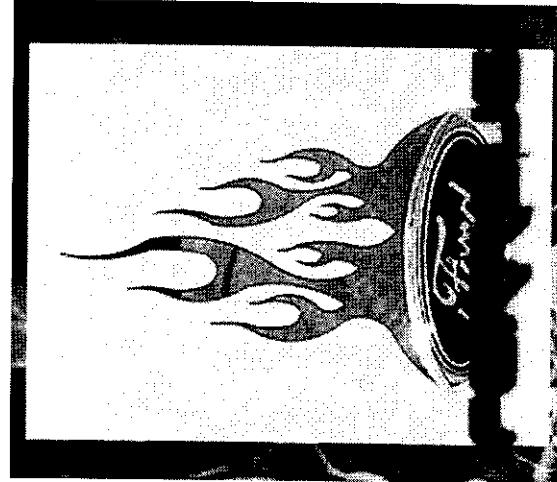
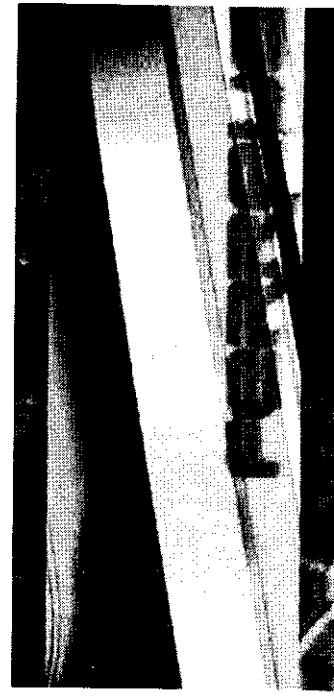
This auction is for the letters M U S T A N G that conveniently fit within the bumper indent of your Mustang. Drive your rear bumper with these brand new polished stainless letters. Made from REAL METAL and utilizing 3M 1 adhesive, they are guaranteed to last as long as your Mustang! Don't be fooled by cheap vinyl imitations that wear and look ugly! Other letters are available, please email us! Check our feedback and bid with confidence!

## **about our products**

All of our products are manufactured with top quality polished stainless steel and are precision cut using the latest cutting laser technology. If you have any questions regarding our products, please email us before bidding. We have HUNDREDS of different car and truck models, so if you can't find what you're looking for, email us VISIT OUR EBAY STORE TODAY!!

## **other items available**

LOOKING FOR OTHER MUSTANG ITEMS? CLICK THE IMAGES BELOW FOR OPTIONS!



**shipping details**

**WE WILL SHIP ANYWHERE IN THE WORLD!  
UNITED STATES AND PUERTO RICO**

**\$6.99**

**CANADA AND MEXICO**

**\$6.99**

**ALL OTHER COUNTRIES**

**\$15.00**

**payment details**

**WE ACCEPT THE FOLLOWING FORMS OF PAYMENT:**

**\*\*PAYPAL \*\***

(OUR PREFERRED METHOD OF PAYMENT)

please send payments to [fireandicechicks@aol.com](mailto:fireandicechicks@aol.com)

**\*\*VISA AND MASTERCARD\*\***

(Must be completed over the phone)

Call our Customer Service line at 801-561-0070

**\*\*MONEY ORDERS\*\***

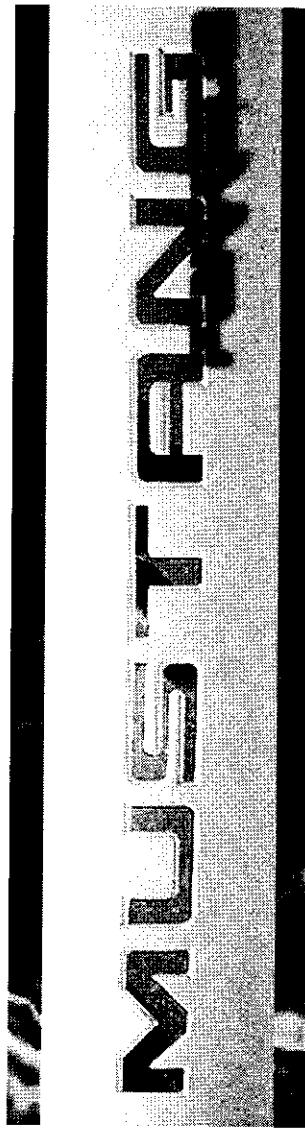
Please make payable and send to:

Fire and Ice Motorsports  
8415 South 700 West Suite 21  
Sandy, Utah 84070

My Store front  


Powered by  


0 0 0 5 5



**Shipping, payment details and return policy**

Shipping Cost	Each Additional Item	Services Available	Available to
US \$6.99	+ \$2.00	US Postal Service Priority Mail®	United States Only

Will ship to Worldwide.

**Shipping Insurance**  
US \$1.50 Optional

**Sales tax**  
 Seller charges sales tax for items shipped to: UT\* (6.600%).  
 \* Tax applies to subtotal + S&H for these states only

#### Seller's return policy:

Item must be returned within: 14 Days

Return Policy Details:

We will accept returns within 14 days of delivery. Refund will be minus shipping charges and the buyer is responsible for return shipping costs.

#### Seller's payment instructions

Sku O109 If paying by money order please INCLUDE YOUR 10 DIGIT EBAY (or your shipment will be seriously delayed!). Send your money order (no personal checks please) to: Fire & Ice Motorsports 8415 South 700 West, Suite 21 Sandy, UT 84070 If you would like to pay with your Visa or Mastercard please call us at 801-561-0070.

#### Payment methods accepted

This seller, fireandicemotorsports, prefers PayPal.



- Money order/Cashiers check
  - Other - See Payment Instructions for payment methods accepted
  - Visa/MasterCard
- [Learn about payment methods.](#)

#### Ready to buy?

Mustang 99 00 01 02 03 04 CHROME Bumper Letters METAL  
 Buy It Now price: US \$39.99

Your Quantity: x

[Buy It Now >](#) You will confirm in the next step.

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Purchase this item now without bidding.  
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eBay official time



# Exhibit B

LAW OFFICES  
**HOWARD, PHILLIPS & ANDERSEN**  
*A PROFESSIONAL CORPORATION*

GREGORY D. PHILLIPS  
Direct Dial: (801) 366-7707  
E-Mail: [gdp@hpalaw.com](mailto:gdp@hpalaw.com)

560 East 200 South, Suite 300  
Salt Lake City, UT 84102

Telephone: (801) 366-7471  
Facsimile: (801) 366-7706

February 8, 2005

**VIA EMAIL ([FireandIceChicks@aol.com](mailto:FireandIceChicks@aol.com)) and  
REGULAR MAIL**

Casey Balding  
8415 South 700 West, #21  
Sandy, Utah 84070

Re: CUSTOMBEZELS.COM and eBay Auctions (fireandicemotorsports) -  
Counterfeit Ford Products

Dear Mr. Balding:

This law firm represents Ford Motor Company ("Ford") on intellectual property enforcement matters. Your sale of counterfeit Ford products on your website CUSTOMBEZELS.COM and on eBay.com have recently come to Ford's attention and as you may recall, Ford has dealt with you in the past with respect to these counterfeit sales.

The law is well-established that you may not place counterfeits of the Ford trademarks on your products, and/or sell products manufactured by others that bear counterfeits of the Ford trademarks. Ford Motor Company v. Lloyd Design Corp., 184 F.Supp.2d 665, 667 (E.D.Mich. 2002) (permanently enjoining the use of counterfeits of various Ford, Jaguar, and Aston Martin trademarks on floor mats, and granting Ford its attorneys' fees and costs because of "Defendant's flagrant disregard for Plaintiffs' trademark rights.").

Also, as you are surely aware, Ford owns many famous trademarks, including but not limited to Ford®, Jaguar®, Mustang®, Expedition®, Escape®, and Powerstroke®. Any use of Ford's trademarks, including the design trademarks or logos that correspond to these trademarks, such as, for example, Ford® or Mustang®, requires a license from Ford. You are not authorized to display this trademark on your website or as part of your eBay auction. Use of these trademarks, or any confusingly similar variation thereof, without Ford's consent, constitutes a misappropriation of the goodwill and reputation developed by Ford and infringes and dilutes these trademarks.

In order that Ford may assess what damages it has suffered as a result of your sale of products using counterfeits of the Ford trademarks and trade dress, please provide the following information no later than February 21, 2005:

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- 1) The number of counterfeit products set forth by item (e.g., grills, decals, gas door covers, etc.) sold or distributed bearing the Ford trademarks or trade dress;
- 2) The gross revenue received from the sale of such counterfeit products set forth by item;
- 3) The time period during which such counterfeit products have been offered and sold;
- 4) The names and addresses of all non-retail purchasers of the counterfeit products and the number of each product listed by item purchased by each such purchaser; and
- 5) The names and addresses of all suppliers of the counterfeit products.,

Ford further demands that you turn over to Ford for destruction all unsold counterfeit items no later than February 21, 2005. Ford further demands that no later than February 21, 2005, you pay Ford by cashier's check damages in the amount of twenty five percent (25%) of the gross revenues from the sales of any counterfeit products using the Ford trademarks or trade dress.<sup>1</sup>

The purpose of this letter is to secure your voluntary agreement to cease your unauthorized use of Ford's trademarks. Ford requests that you immediately, and by no later than **February 21, 2005**, sign and return a copy of the Agreement set forth below confirming your willingness to comply with Ford's trademark rights.

If you do not sign the attached agreement, I will recommend to Ford that we file a complaint in federal district court and seek immediate injunctive relief. If litigation is required, Ford will seek recovery of attorneys' fees and costs that it has incurred in pursuing this lawsuit, as well as statutory and other damages, which will be, needless to say, very substantial.

You may be infringing or diluting Ford's trademarks in ways other than those set forth above, and Ford reserves the right to bring to your attention other matters that Ford believes infringe or dilute its trademarks. This letter is without prejudice to all rights of Ford, including past or future royalties, past or future damages, attorneys' fees, and to bring enforcement actions for all past or future infringement, dilution, or unauthorized uses.

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<sup>1</sup>In the event that Ford is forced to litigate this matter, Ford will seek all profits from the sale of such products trebled as damages, plus its attorneys' fees and costs.

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Should you have any questions concerning Ford's position in this matter, please do not hesitate to contact me.

Very truly yours,



Gregory D. Phillips

GDP:sv

cc: Ford Motor Company

**AGREEMENT**

By execution of this Agreement, the undersigned agrees immediately to cease and desist from all unauthorized uses of the Ford trademarks and trade dress in its products, services, advertisements, promotional literature, promotional telecasts, broadcasts, signage, on the Internet, or otherwise, in connection with the sale of any product, good, part, or service.

Specifically, by way of illustration and without limiting the general agreement expressed above, the undersigned agrees that it will:

- (1) immediately cease and desist from using the Ford trade dress, including without limitation, any photographs, depictions, or silhouettes of Ford® vehicles;
- (2) immediately cease and desist from the advertisement and/or sale of any products or parts bearing counterfeits of the Ford trademarks, and immediately turn over to Ford's counsel for destruction all products and parts bearing counterfeits of the Ford trademarks;
- (3) provide the following information no later than February 21, 2005:
  - a) The number of counterfeit products set forth by item sold (e.g., grills, decals, gas door covers, etc.) or distributed bearing the Ford trademarks or trade dress;

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- b) The gross revenue received from the sale of such counterfeit products set forth by item;
  - c) The time period during which such counterfeit products been offered or sold;
  - d) The names and addresses of all non-retailer purchasers of the counterfeit products and the number of each product listed by item purchased by each such purchaser; and
  - e) The names and addresses of all suppliers of the counterfeit products.
- (4) no later than February 21, 2005, pay Ford by cashier's check damages in the amount of twenty five percent (25%) of the gross revenues from the sales of any products using the Ford trademarks.

The undersigned further agrees that no later than February 21, 2005, the undersigned will provide evidence of compliance of the matters set forth above to Ford's counsel.

The undersigned further agrees and acknowledges that any violation or breach of this Agreement will cause irreparable harm to Ford, and that Ford will be entitled to both a preliminary and permanent injunction against the undersigned for any violation of this Agreement, as well as any other remedy allowed by law. The undersigned further agrees that if it breaches this Agreement, it will pay all costs incurred by Ford in enforcing this Agreement, including reasonable attorneys' fees, whether incurred with or without suit or before or after judgment.

**AGREED TO:**

**CASEY BALDING**

Casey Balding  
Date: 02/21/05

# Exhibit C

## PROMISSORY NOTE

Principal Amount: **\$3,697.84**

Date: April 19, 2005

FOR VALUE RECEIVED, the undersigned hereby jointly and severally promise to pay to the order of **Ford Motor Company** the sum of Three Thousand, Six Hundred, and Ninety-Seven Dollars and Eighty-Four Cents (\$3,697.84). Said sum shall be paid in the manner following: **(7) seven payments of Five Hundred Dollars (\$500) and (1) one payment of One Hundred and Ninety-Seven Dollars and Eighty-Four Cents (\$197.84).** Each payment, respectively, shall be due on the first (1<sup>st</sup>) day of each month, beginning in May of 2005, and continuing on the like day of each consecutive month until all amounts payable hereunder have been paid in full.

This note may be prepaid, at any time, in whole or in part, without penalty.

This note shall at the option of any holder thereof be immediately due and payable upon the occurrence of any of the following:

1. Failure to make any payment due hereunder within **thirty (30)** days of its due date.
2. Upon the death, incapacity, dissolution, or liquidation of any of the undersigned.
3. Upon the filing by any of the undersigned of an assignment for the benefit of creditors, bankruptcy, or other form of insolvency, or by suffering an involuntary petition in bankruptcy or receivership not vacated within **thirty (30)** days.

Notwithstanding the foregoing, if each of the first five payments (totaling \$2,500) has been received by the first day of each month as specified above, Ford Motor Company will, upon the timely receipt of the fifth payment, forgive the remaining \$1,167.84 due under this note.

In the event this note shall be in default and placed for collection, then the undersigned agree to pay all reasonable attorney fees and costs of collection. Payments not made within **five (5) days of due date shall be subject to a late charge of Twenty-Five Dollars (\$25.00)**. All payments hereunder shall be mailed to Howard, Phillips & Andersen, 560 East 200 South, Suite 300, Salt Lake City, Utah 84102.

The undersigned and all other parties to this note, whether as endorsers, guarantors, or sureties, agree to remain fully bound until this note shall be fully paid and waive demand, presentment, and protest and all notices hereto and further agree to remain bound, notwithstanding any extension, modification, waiver, or other indulgence or discharge or release of any obligor hereunder or exchange, substitution, or release of any collateral granted as security for this note. No modification or indulgence by any

holder hereof shall be binding unless in writing; and any indulgence on any one occasion shall not be an indulgence for any other or future occasion. Any modification or change in terms, hereunder granted by any holder hereof, shall be valid and binding upon each of the undersigned, notwithstanding the acknowledgement of any of the undersigned, and each of the undersigned does hereby irrevocably grant to each of the others a power of attorney to enter into any such modification on their behalf. The rights of any holder hereof shall be cumulative and necessarily successive. This note shall take effect as a sealed instrument and shall be construed, governed, and enforced in accordance with the laws of the **State of Utah**.

Witnessed:

Casey Balding  
Casey Balding

04/21/05  
Date

Owner  
Fire and Ice Motorsports

4/21/05  
Date

JS 44 (Rev. 11/04)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

THE END

**I. (a) PLAINTIFFS**

FORD MOTOR COMPANY, a Delaware Corporation

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_  
(EXCEPT IN U.S. PLAINTIFF CASES)**DEFENDANTS**FABTECH MANUFACTURING, INC., d/b/a FIRE AND ICE  
MOTORSPORT, a Utah CorporationJULY 26 P 5:04  
County of Residence of First Listed Defendant Salt Lake County(IN U.S. PLAINTIFF CASES ONLY)  
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

Attorneys (If Known)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Gregory D. Phillips, Howard, Phillips & Andersen, 560 East 200 South,  
Suite 300, Salt Lake City, Utah 84102, 801-366-7471**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- |  |   |
|--|---|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)  |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity<br>(Indicate Citizenship of Parties in Item III) |

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>		<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 470 Racketeers Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input checked="" type="checkbox"/> 840 Trademark	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability		<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract				<input type="checkbox"/> 850 Securities/Commodities/ Exchange
<input type="checkbox"/> 195 Contract Product Liability				<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise				<input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<b>PRISONER PETITIONS</b>	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<b>Habeas Corpus:</b>	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition		

**V. ORIGIN**

(Place an "X" in One Box Only)

- |  |   |  |   |  |   |  |
|--|---|--|---|--|---|--|
| <input type="checkbox"/> 1 Original Proceeding | <input type="checkbox"/> 2 Removed from State Court | <input type="checkbox"/> 3 Remanded from Appellate Court | <input type="checkbox"/> 4 Reinstated or Reopened | <input type="checkbox"/> 5 Transferred from another district (specify) _____ | <input type="checkbox"/> 6 Multidistrict Litigation | <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judgment |
|--|---|--|---|--|---|--|

**VI. CAUSE OF ACTION**Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
**15 USC 1051, et seq.**

Brief description of cause:

**VII. REQUESTED IN COMPLAINT:** CHECK IF THIS IS A CLASS ACTION  
UNDER F.R.C.P. 23**DEMAND \$**CHECK YES only if demanded in complaint:  
**JURY DEMAND:**  Yes  No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

26 Aug 2005

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFFP

Judge Dee Benson

DECK TYPE: Civil

DATE STAMP: 08/26/2005 @ 17:00:21

CASE NUMBER: 2:05CV00719 DB